

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7524

Petition of Vermont Electric Cooperative, Inc.           )  
pursuant to 30 V.S.A. § 248(j) for a certificate of       )  
public good authorizing the relocation of 455 feet       )  
of VEC's existing 46 kV transmission line on            )  
South Street and along Route 105 in the Island         )  
Pond area of the Town of Brighton, Vermont            )

Order entered: 8/14/2009

**I. INTRODUCTION**

This case involves a petition filed with the Vermont Public Service Board ("Board") by Vermont Electric Cooperative, Inc. ("VEC") on March 30, 2009. VEC requests approval, pursuant to 30 V.S.A. § 248(j), to relocate approximately 455 feet of 46 kV transmission line, with a 12.47 kV distribution line under-build, within the Island Pond area of Brighton, Vermont (the "Project"). VEC proposes to move the existing transmission and distribution lines and structures from the current location at South Street in Island Pond to an adjacent public right-of-way. The relocation is necessary in order to resolve clearance and safety issues where the existing transmission and distribution lines cross the property of Raymond Pepin ("Pepin") at 30 South Street, Island Pond. The petition included prefiled testimony and exhibits as well as proposed findings and a proposed order, pursuant to the requirements of 30 V.S.A. § 248(j).

On April 23, 2009, the Clerk of the Board notified VEC by letter that additional information on the Project was needed to make the filing complete.

On May 1, 2009, VEC filed the additional information.

Notice of the filing in this Docket was sent on June 10, 2009, to all entities specified in 30 V.S.A. § 248(a)(4)(c), and all other interested parties. The notice stated that any party wishing to submit comments as to whether the petition raises a significant issue with respect to

the substantive criteria of 30 V.S.A. § 248 needed to file comments with the Board on or before July 10, 2009.

On July 10, 2009, the Agency of Natural Resources ("ANR") filed a letter with the Board stating that it had not identified any significant issues related to the substantive criteria of 30 V.S.A. § 248. The Vermont Department of Public Service ("DPS") submitted comments on July 20, 2009, which stated that the DPS does not believe that the petition raises any substantive issues with respect to the criteria of 30 V.S.A. § 248. No other parties filed comments as requested by the Notice.

The Board has determined that the proposed project will be of limited size and scope and that the petition has effectively addressed the issues raised with respect to the substantive criteria of 30 V.S.A. § 248. Consequently, we find that the procedures authorized by Section 248(j) are sufficient to satisfy the public interest, and no hearings are required.

## **II. FINDINGS**

1. VEC is a company as defined in 30 V.S.A. § 201, and subject to the Board's jurisdiction. Petition at 1.

2. VEC owns and operates a 46 kV transmission line which originates at the Vermont Transco LLC Newport Substation and extends approximately 20 miles through the towns of Derby, Charleston, and Brighton. This transmission line delivers energy to VEC's Derby, West Charleston, and Island Pond Substations. Abendroth pf. at 3.

3. The Project involves the relocation of approximately 455 feet of existing transmission line and an identical amount of 12.47 kV distribution underbuild within the Island Pond area of Brighton, Vermont, in order to resolve clearance and safety issues where the existing transmission and distribution lines cross the property of Mr. Raymond Pepin. Abendroth pf. at 3.

4. This section of the line is currently located on South Street in Island Pond and runs down the southern side of the street, between the curb and the sidewalk. At the point where the line reaches the Pepin property, the line turns left at a 45-degree angle and crosses over the roof of a garage owned by Pepin. The line then turns north along Route 105 and terminates at VEC's Island Pond Substation. Both the existing transmission line and distribution under-build are supported on wood poles that are approximately 43 feet high. Horizontal wood crossarms

support each circuit. The approximate clearance between the existing distribution circuit conductors and the roof of Mr. Pepin's garage is ten feet. Abendroth pf. at 3; exh. VEC-HRA-1.

5. VEC's predecessor, Citizens Communications Company, d/b/a Citizens Energy Services ("Citizens"), constructed the distribution line in the vicinity of the Pepin property in the early 1970's. The line was built within the road right-of-way except for a portion on the property then owned by Mr. Alton E. Hall, who granted Citizens an easement over the property in 1972. Mr. Hall sold the property to Mr. Pepin in 1975. In 1987, Citizens built the current 46 kV transmission line from Charleston through Island Pond and along Route 105 to Bloomfield.<sup>1</sup> The transmission line was built within the existing 12.47 kV distribution-line corridor, and a second pole was set near the northwest corner of the existing Pepin building, apparently without obtaining additional easement rights from Mr. Pepin. In 1989, Mr. Pepin received a zoning permit to build an addition to his existing commercial garage and constructed the addition directly under the transmission line, resulting in the current unsafe situation. Abendroth supp. pf. at 1-3; exh. VEC-HRA-6.

6. It is VEC's understanding that Mr. Pepin asked Citizens to move the transmission line on several occasions. Citizens' position at that time was that Mr. Pepin should pay for the relocation. Shortly after VEC acquired Citizens service territory, Mr. Pepin contacted VEC to again ask that the line be relocated. Initially, VEC adopted Citizens' response and informed Mr. Pepin that he would have to pay for the relocation since he created the problem by constructing his addition under the line. Mr. Pepin responded that he could not afford to pay the costs of relocation and insisted that it was VEC's obligation to move the line since the original Hill easement did not grant sufficient rights for the Citizens' over-build. As a result, an impasse ensued between the parties which continued for several years. Abendroth supp. pf. at 2-3.

7. From an engineering perspective, VEC recognizes that the Pepin portion of the transmission line does not comply with the National Electric Safety Code ("NESC") clearance requirements and that the current situation constitutes a safety threat to persons and property. Accordingly, VEC proposed two options to Mr. Pepin for correcting the non-compliance issue: either relocate the line away from the Pepin garage or increase the height of the line above the

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1. See Docket No. 5117, Order of 9/30/87.

garage. Mr. Pepin rejected both options again insisting that he can not afford to pay the project costs and that it is VEC's obligation to move the line. VEC concedes that the easement questions raised by Mr. Pepin may be valid, and recognizes that obtaining the necessary easement rights, either through condemnation or quiet title, would consume additional time and resources. Consequently, VEC has concluded that non-action is not a viable option and that relocating the line, at its own expense, is the least-costly solution to the problem. Abendroth supp. pf. at 2-3.

8. VEC proposes to relocate the line to an existing public right-of-way along the south side of South Street which is presently used for telephone services. VEC will replace the existing telephone poles with two new poles, one on South Street and one on Route 105, thus avoiding the Pepin property. A third pole, approximately ten feet shorter in length, will be placed at the north end of South Street to support guy wires for an existing transmission pole located across the street. VEC is in the process of obtaining the necessary town permits and easements for the relocation. Abendroth pf. at 2, 4; exh. VEC-HRA-2.

9. An outage will be necessary to connect the relocated transmission and distribution lines to the existing lines. VEC will provide advance notice to all customers who will be affected by this outage. Abendroth pf. at 5.

10. VEC estimates the entire cost of the Project to be \$78,000.00. VEC will pay for the Project from its capital budget and will not need to borrow money. Abendroth pf. at 5; exh. VEC-HRA-4.

### **Orderly Development of the Region**

[30 V.S.A. § 248(b)(1)]

11. The proposed project will not unduly interfere with the orderly development of the region and will comply with the recommendations of the municipal and regional planning commissions. While the Brighton Town Plan does not address relocation of transmission lines, it includes an objective to "[b]ring desired utilities or services to residents in accordance with local demand." The Project meets this objective by resolving clearance issues where the existing transmission and distribution lines cross the property of Mr. Pepin, resulting in increased safety and reliability. In addition, on October 2, 2008, a VEC representative attended the Town of Brighton Selectboard meeting and described the Project. The Selectboard stated that they had no

objection to the Project. Abendroth pf. at 5; exh. VEC-HRA-5.

12. The Project is also consistent with the Northeastern Vermont Development Association's ("NVDA") Regional Plan, as adopted in 2006. Specifically, the Project complies with the goals expressed in Chapter 2 of the Plan to "[p]rovide adequate, reliable, and secure energy supply to meet the region's needs." Abendroth pf. at 6.

13. The Town of Brighton Planning Commission, the Board of Trustees, and NVDA have waived the 45-day advance filing requirement in 30 V.S.A. § 248(f). Town of Brighton letter dated 3/25/09; NVDA letter dated 3/26/09.

#### **Need for Present and Future Demand for Service**

[30 V.S.A. § 248(b)(2)]

14. The proposed project is needed to resolve clearance and safety issues, not to address present and future load demand. Energy conservation programs and measures, energy efficiency, and load management will not eliminate the need for the Project. Abendroth pf. at 6.

#### **System Stability and Reliability**

[30 V.S.A. § 248(b)(3)]

15. The Project will improve system stability and reliability for VEC by resolving the clearance issues described above. Abendroth pf. at 6.

#### **Economic Benefit to the State**

[30 V.S.A. § 248(b)(4)]

16. The Project will benefit the state and its residents by resolving a safety hazard that exists due to inadequate clearance between VEC's transmission and distribution lines and the structure on Mr. Pepin's property. In addition, relocating the existing line is less costly to VEC's consumer-members than the potential cost of litigation to condemn Mr. Pepin's property, the cost of paying Mr. Pepin fair-market value for his property, and the cost of demolishing the structure and recovering the property to an acceptable condition. The state's residents will also avoid the litigation costs that would be incurred by the State of Vermont. Abendroth pf. at 6-7.

**Aesthetics, Historic Sites, Air and Water Purity,  
the Natural Environment and Public Health and Safety**

[30 V.S.A. § 248(b)(5)]

17. The Project will not have an undue adverse effect on aesthetics or historic sites. As explained above, the two relocated poles and associated conductors and components will remain in the same vicinity as the existing line and will be placed within a public right-of-way that is located in a developed area. Thus, there will be no adverse aesthetic impacts. Additionally, there will not be any impact on above-ground historic sites for the reasons stated above. Finally, there will not be any impact on below-ground historic sites as all areas of disturbance have previously been disturbed. Abendroth pf. at 7.

**Outstanding Resource Waters**

[10 V.S.A. § 1424(a)(d)]

18. There are no outstanding resource waters adjacent to the Project. Abendroth pf. at 7.

**Water and Air Pollution**

[10 V.S.A. § 6086(a)(1)]

19. The Project will not affect air or water purity or the natural environment.  
Abendroth pf. at 7.

**Headwaters**

[10 V.S.A. § 6086(a)(1)(A)]

20. The Project will not have an impact on any headwaters of the state. Abendroth pf. at 8.

**Waste Disposal**

[10 V.S.A. § 6086(a)(1)(B)]

21. Any wastes produced during construction of the Project will be removed from the site and shipped to a licensed disposal facility. Abendroth pf. at 8.

**Water Conservation**

[10 V.S.A. § 6086(a)(1)(C)]

22. This Project does not require water conservation measures because it will not use water and will not impact any potable water supplies. Abendroth pf. at 8.

**Floodways**

[10 V.S.A. § 6086(a)(1)(D)]

23. The proposed Project is not located in a flood boundary or flood plain. Abendroth pf. at 8.

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**Streams**

[10 V.S.A. § 6086(a)(1)(E)]

24. There are no streams in the vicinity of the Project. Abendroth pf. at 8.

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**Shorelines**

[10 V.S.A. § 6086(a)(1)(F)]

25. The proposed Project does not affect any shorelines. Abendroth pf. at 9.

**Wetlands**

[10 V.S.A. § 6086(a)(1)(G)]

26. There is no impact on wetlands from this Project. Abendroth pf. at 9.

**Sufficiency of Water and Burden on Existing Water Supply**

[10 V.S.A. §§ 6086(a)(2)&(3)]

27. The Project will not require a water supply. Abendroth pf. at 9.

**Soil Erosion**

[10 V.S.A. § 6086(a)(4)]

28. The Project will not cause soil erosion. Soil disturbance will be limited to drilling a hole for two new poles and removing one existing pole. Abendroth pf. at 9.

**Transportation Systems**

[10 V.S.A. § 6086(a)(5)]

29. VEC expects no long-term traffic impacts from the Project, but expects minor short-term traffic impacts on Route 105. There will be no road closures, but there will most likely be one-lane road restrictions during periods of construction. Abendroth pf. at 9.

**Educational and Municipal Services**

[10 V.S.A. § 6086(a)(6)&amp;(7)]

30. The Project will not impact educational or other municipal services. Abendroth pf. at 9.

**Aesthetics, Necessary Wildlife Habitat, Historic Sites and Rare and Irreplaceable Natural Areas**

[10 V.S.A. § 6086(a)(8)]

31. The Project site does not contain necessary wildlife habitat, primary agricultural soils, rare and irreplaceable natural areas, or endangered species. Abendroth pf. at 9-10.

**Discussion**

Based on the above findings, the proposed project will not have an undue adverse effect on the aesthetics or scenic and natural beauty of the area. In reaching this conclusion, we rely on the Environmental Board's methodology for determination of "undue" adverse effects on aesthetics and scenic and natural beauty as outlined in the so-called Quechee Lakes decision. Quechee Lakes Corporation, 3W0411-EB and 3W0439-EB, dated January 13, 1986.

As required by this decision, it is first appropriate to determine if the impact of the project will be adverse. The project would have an adverse impact on the aesthetics of the area if its design is out of context or not in harmony with the area in which it is located. If it is found that the impact would be adverse, it is then necessary to determine that such an impact would be "undue." Such a finding would be required if the project violates a clear written community standard intended to preserve the aesthetics or scenic beauty of the area, if it would offend the sensibilities of the average person, or if generally available mitigating steps would not be taken to improve the harmony of the project with its surroundings. The Board's assessment of whether a particular project will have an "undue" adverse effect based on these standards should be significantly informed by the overall societal benefits of the project.<sup>2</sup>

\_\_\_\_\_The relocation has been necessitated by the existence of an unsafe situation where the transmission and distribution lines cross the Pepin property, clearing the Pepin garage by only ten feet. VEC proposes to move the lines and one pole off the Pepin property into an adjacent and

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2. Docket 6884, Order of 4/21/04 at 20-21.

existing public right-of-way which is presently used for telephone services. When viewed in this context, the Project will fit the context of its surroundings and will not have an adverse aesthetic impact. Even if the relocation did have an adverse impact on aesthetics, because a transmission line already exists near the property it will not be shocking or offensive. There is no written community standard prohibiting the relocation of existing transmission facilities when necessary.

**Development Affecting Public Investments**

[10 V.S.A. § 6086(a)(9)(K)]

32. Because the Project involves relocating only one pole and associated components in an area where utility and telephone poles already exist, it will not have a negative impact on any public investment in a public resource. Nor will it interfere with the public's use or enjoyment of, or access to such resources. Easements will be obtained for the relocated line to allow for vegetation management in the future. Abendroth pf. at 10.

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**Public Health and Safety**

[30 V.S.A. § 248(b)(5)]

33. The Project will not have any adverse effects on the health, safety, or welfare of the public or adjoining landowners. The Project will increase safety, and VEC will design the Project in accordance with the NESC requirements. VEC will use high-quality materials and adhere to prudent utility construction practices throughout the construction phase. The Project will not unnecessarily or unreasonably endanger the public or adjoining landowners. Abendroth pf. at 10.

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**Least-Cost Integrated Resource Plan**

[30 V.S.A. § 248(b)(6)]

34. VEC's latest Integrated Resource Plan ("IRP") was filed with the Public Service Board on July 1, 2008. It is presently the subject of PSB Docket 7449, but has not yet been approved.<sup>3</sup> On Page 6 of the 2008 IRP, VEC states that it intends to comply with the NESC as it corrects deficiencies in its 46 kV transmission system. Abendroth pf. at 11.

35. Although the Project is not explicitly addressed in the IRP, it is consistent with VEC's

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3. Subsequent to the filing of testimony in this proceeding, the Board approved the transmission and distribution portion of VEC's IRP. See Docket No. 7449, Order of 7/31/09.

stated IRP goal to eliminate instances of non-compliance with the NESC. Abendroth pf. at 11.

36. VEC's January 14, 2004, IRP has been approved by the Board. It does not explicitly address the Project, but page 13 of the 2004 IRP expresses VEC's commitment to pursue measures to improve the efficiency and reliability of its transmission and distribution system, and the Project furthers that goal. Abendroth pf. at 11.

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**Compliance with Electric Energy Plan**

[30 V.S.A. § 248(b)(7)]

37. The Project is consistent with the Vermont Electric Plan. Abendroth pf. at 11-12.

38. On August 13, 2009, the DPS filed a letter stating that the proposed project is consistent with the *Vermont Twenty-Year Electric Plan*, pursuant to 30 V.S.A. § 202(f).

**Existing or Planned Transmission Facilities**

[30 V.S.A. § 248(b)(10)]

39. The existing or planned transmission facilities will serve the Project without creating an undue adverse effect on Vermont utilities or customers. Abendroth pf. at 12.

**III. CONCLUSION**

Based upon all of the above evidence, we conclude that the proposed Project will be of limited size and scope; the petition does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248; the public interest is satisfied by the procedures authorized by 30 V.S.A. § 248(j); and the proposed project will promote the general good of the state. In addition, because of the limited size and scope of the project, we grant VEC's request to waive the requirements under Board Rule 5.402(C)(1)(a) and (b) for submission of a detailed site plan for the Project.

**IV. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The proposed modifications, in accordance with the evidence, plans, and other information presented in this proceeding, will promote the general good of the State of Vermont

in accordance with 30 V.S.A. Section 248, and a certificate of public good shall be issued in the matter.

Dated at Montpelier, Vermont, this 14<sup>th</sup> day of August, 2009.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: August 14, 2009

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*